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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,261	04/01/2004	Yoshihiro Majima	2018-866	6941
23117	7590	04/18/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			NGUYEN, TU MINH	
		ART UNIT	PAPER NUMBER	3748

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/814,261	MAJIMA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tu M. Nguyen	3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5-11 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) 1,5-11,27,28 and 30-33 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2 and 29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 February 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. 10/152,995.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>022806</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

1. An Applicant's Amendment filed on February 28, 2006 has been entered. Claims 12-26 have been canceled; and claims 27-33 have been added. Overall, claims 1, 2, 5-11, and 27-33 are pending in this application.
2. Based on a previous applicant's election without traverse of the invention of Group I and the species of Figures 2-3, claims 2 and 29 are readable thereon and will be examined in their full merit.

Newly submitted claims 27, 28, and 30-33 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: each of these claims reads on the species of Figure 4, in which an ignition timing is not at all retarded until a negative pressure of the intake pipe or of the brake booster is equal to or less than a predetermined value.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 5-11, 27, 28, and 30-33 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### *Drawings*

3. The formal drawing of Figure 1 filed on February 28, 2006 has been approved for entry.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 2 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Tsunooka (U.S. Patent 6,557,524).

As shown in Figures 1 and 4, Tsunooka discloses a control apparatus and a control method for an internal combustion engine (10), the apparatus comprising:

- a brake booster (18) for increasing a brake force of a brake by using a negative pressure of an intake pipe (34) employed in the internal combustion engine; and  
- an ignition retarding control means (12, 54) for executing ignition retarding control to retard an ignition timing at a cold start in order to promote an operation to heat a catalyst for cleaning an exhaust gas (see lines 31-39 of column 9),

wherein the ignition retarding control means starts the ignition retarding control after a predetermined time ( $t_{10}$ ) lapses since a start (see Figure 4A and lines 14-22 of column 10).

***Response to Arguments***

6. Applicant's arguments with respect to the references applied in the previous Office Action have been fully considered but they are not persuasive.

In response to applicant's argument that Tsunooka fails to disclose or suggest a step of starting an ignition retarding control after a predetermined time lapses since an engine start (page 9 of Applicant's Amendment), the examiner respectfully disagrees.

The text on lines 14-16 of column 10 in Tsunooka reads as follows: "*As shown in FIG. 4A, at a point of time t=t<sub>10</sub> after the engine 10 is started, the ignition timing starts being retarded so as to accelerate warm-up of a catalyst, for example.*" (emphasis added by examiner). Therefore, Tsunooka clearly discloses the claimed feature in dispute.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Prior Art***

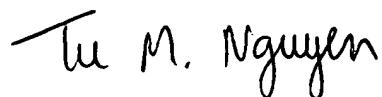
8. The IDS (PTO-1449) filed on February 28, 2006 has been considered. An initialized copy is attached hereto.

***Communication***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Tu Nguyen whose telephone number is (571) 272-4862.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas E. Denion, can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TMN  
April 13, 2006

Tu M. Nguyen  
Primary Examiner  
Art Unit 3748

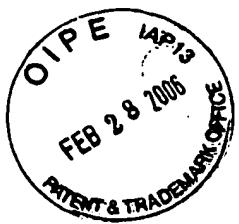
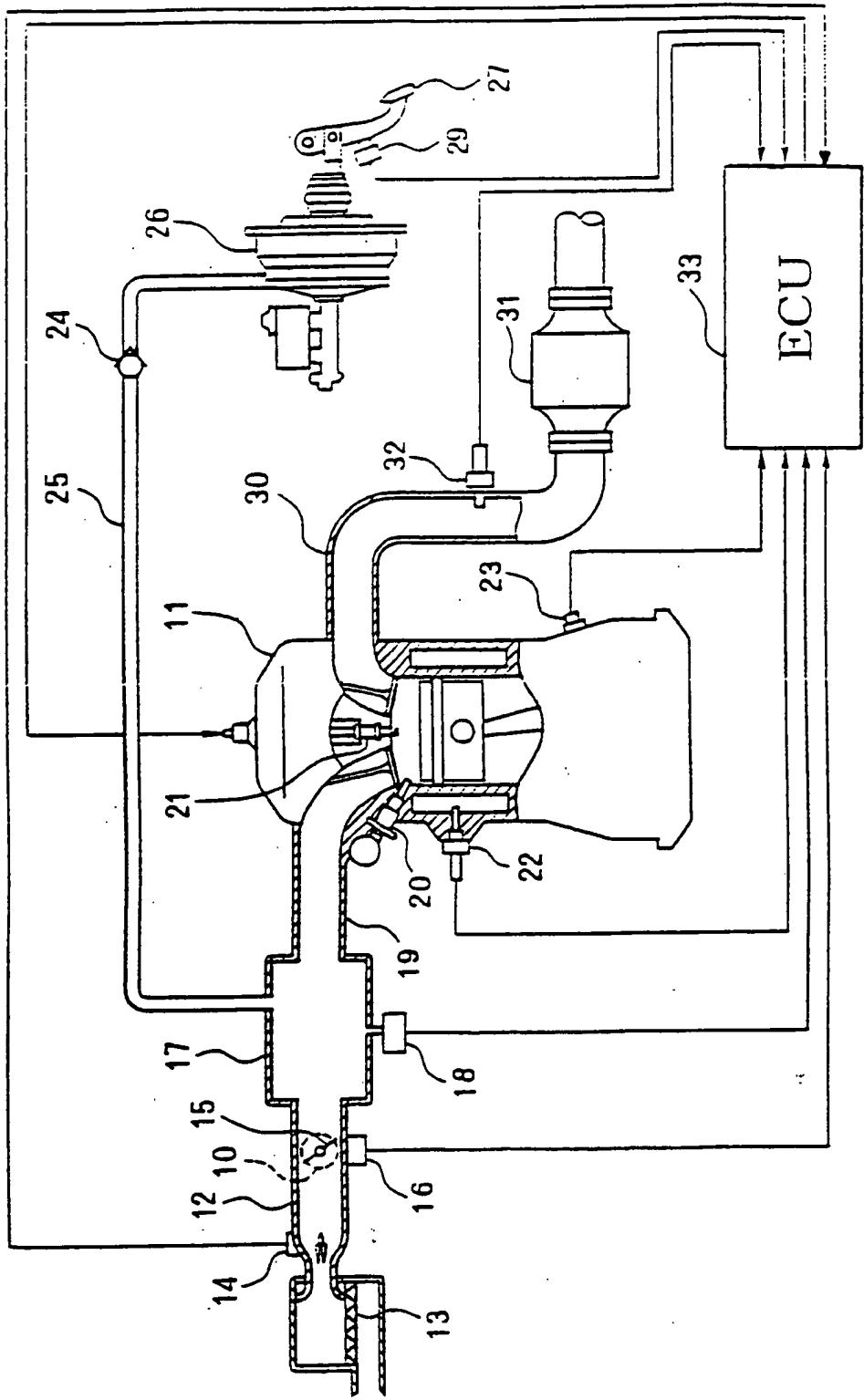


FIG. 1



Approved for Entry  
4/13/06  
TMN